

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Parts 1, 21, 73, 74 and 101 of	)	WT Docket No. 03-66
the Commission's Rules to Facilitate the	)	RM-10586
Provision of Fixed and Mobile Broadband	)	
Access, Educational and Other Advanced	)	
Services in the 2150-2162 and 2500-2690 MHz	)	
Bands	)	
	)	
Part 1 of the Commission's Rules - Further	)	WT Docket No. 03-67
Competitive Bidding Procedures	)	
	)	
Amendment of Parts 21 and 74 to Enable	)	MM Docket No. 97-217
Multipoint Distribution Service and the	)	
Instructional Television Fixed Service to	)	
Engage in Fixed Two-Way Transmissions	)	
	)	
Amendment of Parts 21 and 74 of the	)	WT Docket No. 02-68
Commission's Rules With Regard to Licensing in	)	RM-9718
the Multipoint Distribution Service and in the	)	
Instructional Television Fixed Service for the	)	
Gulf of Mexico	)	
	)	
Promoting Efficient Use of Spectrum Through	)	WT Docket No. 00-230
Elimination of Barriers to the Development of	)	
Secondary Markets	)	

**REPLY COMMENTS**  
**OF TRANS VIDEO COMMUNICATIONS, INC.**  
**ON FURTHER NOTICE OF PROPOSED RULEMAKING**

February 8, 2005

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## SUMMARY

Trans Video Communications, Inc. (“TVC”) explained in its Comments in response to the FNPRM in this proceeding why grandfathered E- and F-group ITFS licensees and their educational communities should not be deprived of their spectrum rights in the transition to the new BRS/EBS band plan. Of over twenty parties filing initial comments, only one -- NY3G Partnership -- proposes that the Commission should relegate grandfathered E- and F-group channel licensees to secondary status in favor of placeholder MMDS licensees. Its arguments, which are directed primarily at TVC, are misguided and unavailing. NY3G seeks to promote its private interests, not the public interest.

NY3G’s belated argument that TVC has been operating for almost forty years in violation of the Commission’s “four-channel” rule is wrong as a matter of law and irrelevant in this proceeding. NY3G’s economic analysis -- designed to demonstrate that consumer commercial benefits would flow from granting primary rights to NY3G -- is irrelevant to the question posed in the FNPRM, since it fails to account for the value of educational services provided in the shared BRS/EBS spectrum. It also suffers from a number of infirmities in its assumptions and in the premises of its public interest comparison. NY3G’s argument that confiscation of the protected spectrum rights of grandfathered licensees would be consistent with prior Commission decisions cannot be sustained in light of the Commission’s clear statements to the contrary. And NY3G’s assertion that the equitable “split-the-football” approach to resolving PSA overlaps is unworkable is demonstrably wrong.

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**REPLY COMMENTS**  
**OF TRANS VIDEO COMMUNICATIONS, INC.**  
**ON FURTHER NOTICE OF PROPOSED RULEMAKING**

Pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. § 1.415),  
Trans Video Communications, Inc., ("TVC"), which is owned by the Roman Catholic  
Diocese of Brooklyn and operates eight EBS channels serving educational and other  
communities in Brooklyn and Queens, New York, submits the following Reply

Comments in the above-referenced docket. In its opening Comments, TVC explained why grandfathered E- and F-group ITFS licensees and their educational communities should not be deprived of their spectrum rights in the transition to the new BRS/EBS band plan.

Of over twenty parties filing initial comments in response to the Further Notice of Proposed Rulemaking,<sup>1</sup> NY3G Partnership (“NY3G”) stands alone in proposing that the Commission should essentially revoke the licenses of grandfathered EBS licensees as part of the transition. It alone argues that relegating grandfathered E- and F-group channel licensees to secondary status in favor of placeholder MMDS licensees would somehow serve the public interest. To the contrary, however, the public interest will be served by protecting the spectrum rights of all incumbent EBS licensees in the transition.

## INTRODUCTION

NY3G's Comments are aimed at persuading the Commission that turning over the grandfathered licenses to a commercial licensee who promises to develop them will provide greater future economic benefits than allowing the incumbent educational licensee to keep them. But NY3G's argument proves too much, since

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<sup>1</sup> Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, RM-10586, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (“*FNPRM*”).

under that rationale, all EBS licenses, not just grandfathered licenses, should be forfeited to BRS licensees. There could be no justification for such a radical departure from the Commission's express policy objectives and the public interest.

NY3G also seeks to contrast the as yet unproven potential of future services promised by a placeholder commercial licensee with what it asserts is an inefficient prior use of spectrum by TVC. But in this rulemaking proceeding, which focuses on introducing new flexibility into the BRS/EBS spectrum, the proper comparison for NY3G's posited future services is with the potential new educational services that can be provided by EBS licensees under the new band plan. Under that criterion, the new services that will be introduced by incumbent EBS licensees outweigh any speculative benefits NY3G asserts.

In sum, NY3G is seeking to promote its private commercial interests, not the overall public interest. By contrast, the resolution of the grandfathered E- and F-group license issue proposed by TVC and numerous other BRS and EBS parties would serve both educational and commercial interests.

**I. NY3G's Attempt to Expropriate TVC's F-Group Licenses by Means of a So-Called "License Modification" Request Should be Ignored.**

NY3G begins with a specific attack on TVC<sup>2</sup> that is based, among other errors, on a fundamental misreading of the Commission's Rules and its spectrum

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<sup>2</sup> NY3G Comments at 5-6 and Exhibit 1.

policies.<sup>3</sup> NY3G asserts, in a “Petition to Modify Licenses,” that TVC’s operation of its F-group channels for nearly forty years has been in violation of the Commission’s “four-channel” rule, 47 CFR § 74.902(d)(1), and that TVC’s licenses should accordingly be “modified” to prohibit continued operation by TVC on those channels.<sup>4</sup> This would conveniently eliminate the channel overlap that has existed since NY3G’s predecessor was first granted conditional rights as the MMDS F-group overlay licensee in the mid-1980s, making it possible, NY3G asserts, to resolve the grandfathered F-group license issue “without resort to the implementation of new rules of general applicability.”<sup>5</sup>

But Section 74.902(d)(1) of the Commission's Rules, by its terms, governs the initial assignment of ITFS channels, and the Commission’s assignment of the F-group channels to TVC in 1966 was fully in compliance with the rule as applied at the time. Indeed, as the Commission explained in a 1988 decision involving a challenge under the four-channel rule to an ITFS licensee’s request for assignment of its third channel group, a system (like TVC’s) that sought the assignment of additional ITFS channels in order to relay the same educational programming to schools in adjacent areas was “the very type of facility that the ITFS rules were

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<sup>3</sup> TVC has filed a separate Opposition to NY3G's Petition.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 5-6.

intended to make possible.”<sup>6</sup> The Commission had, “throughout the history of the ITFS service,”<sup>7</sup> actively favored ITFS systems designed to operate their initial channels at relatively low power and transmitter heights, and to add more channels to relay their programming to areas that could not receive the signal because of topography or building obstructions, because it considered such systems to be the most spectrum-efficient use of ITFS channels.<sup>8</sup> TVC designed just such an integrated and spectrum-efficient system to serve its educational communities in Brooklyn and Queens, and has operated it as intended for nearly four decades. NY3G's belated assertion that TVC's operation of its F-group channels is or has been in violation of the Commission's Rules is simply wrong as a matter of law.

Moreover, in the context of this rulemaking proceeding, NY3G's attack is even more misguided. Under the new rules and expanded flexibility presented by the BRS/EBS band plan, TVC will strive in new ways, as it has over the decades, to make efficient use of the available spectrum and meet the Commission's policy objectives and expectations. Indeed, the Commission, in recognition of the importance of allowing EBS licensees to take advantage of this new flexibility to

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<sup>6</sup> *Daytona Beach Community College*, 3 FCC Rcd 1951, 1952 ¶ 8 (1988), *rev'd sub nom. Hispanic Info. & Telecomms. Network, Inc. v. FCC*, 865 F.2d 1289 (D.C. Cir. 1989).

<sup>7</sup> Brief for Appellee at 38, *Hispanic Info. & Telecomms. Network, Inc. v. FCC*, 865 F.2d 1289 (D.C. Cir. 1989) (No. 88-1335).

<sup>8</sup> *Id.* at 39.

serve the public interest, has eliminated the four-channel rule going forward.<sup>9</sup> A number of commenters in this proceeding, including BRS operators, have supported the prompt elimination of the rule, and have argued that allowing EBS licensees to acquire more channels will both permit the offering of new educational services and facilitate the process of leasing spectrum blocks for the introduction of new commercial services.<sup>10</sup> For these same reasons, and consistent with the policy decisions the Commission has already made, it would be contrary to the public interest to confiscate TVC's F-group channels under a purported enforcement of the four-channel rule, just as the transition to the new band plan begins. NY3G has provided no justification whatever for modifying or revoking TVC's licenses.

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<sup>9</sup> See *FNPRM* at 14292 ¶ 346 (footnote omitted) (“At the time the four-channel rule was established, ITFS was limited to video broadcast uses. Given the wider range of services that ITFS can now be used for and the changes to our leasing rules, it appears that the four-channel rule may unduly limit the ability of educational institutions and organizations to take full advantage of the potential of ITFS.”)

<sup>10</sup> See, e.g., Comments of C&W Enterprises, Inc. at 5; Joint Comments of the Catholic Television Network and the Nat'l ITFS Ass'n at 18; Comments of Digital Broadcast Corp. at 6; Comments of Hispanic Info. and Telecomm. Network at 9-10; Comments of ITFS/2.5 GHz Mobile Wireless Eng'g & Dev. Alliance, Inc., at V.; Comments of Wireless Commun. Ass'n Internat'l, Inc., at 28-29; Comments of Wireless Direct Broadcast Sys. at 5.

## **II. NY3G's Economic Argument for Expropriating Grandfathered ITFS Licenses is Irrelevant and Wrong.**

NY3G presents an economic analysis<sup>11</sup> that seems to boil down to this simple proposition: Granting primary rights to commercial licensees will promote the deployment of commercial services, which will provide incremental competitive benefits to consumers of commercial services; hence, the Commission should grant primary rights to commercial licensees. The analysis, however, fails to consider the public interest value of providing educational as opposed to commercial services. Moreover, it is based on a mistaken premise about the difficulty of reaching agreement to resolve conflicting spectrum rights.

TVC agrees, first, that the Commission's adoption of clear rules to resolve the respective rights of grandfathered ITFS licensees and conditional overlay MMDS licensees would assist the transition to the new band plan. The clarifying rule the Commission should adopt, however, is not the confiscatory fiat proposed by NY3G. Indeed, the result of NY3G's proposal would be to provide itself a commercial windfall of huge proportions.<sup>12</sup> Instead, the "split-the football" approach proposed by TVC and other commenters would provide an equitable and expeditious resolution of conflicting rights, and would best serve the public interest. In lieu of that approach, the only fair and lawful rule would be one that protected the primary

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<sup>11</sup> NY3G Comments at 8-11 and Exhibit 2.

<sup>12</sup> Using Dr. Hazlett's projections that the fifth competitor would produce 455,000 new subscribers at \$28.44 per month, *id.* at Exhibit 2 pp. 15-16, annual revenues from new subscribers alone would exceed \$155 million.

rights held by all incumbent EBS licensees, including grandfathered ITFS licensees, throughout their PSA's, and directed the overlay MMDS licensees to operate on a secondary basis.

NY3G's analysis predicts, based on a series of assumptions, that NY3G could, if it commenced service, become the 3rd, 4th, or 5th source of broadband service in New York, and by competing with already-operating broadband providers reduce prices sufficiently to bring between 119,000 and 455,000 new broadband subscribers into the market.<sup>13</sup> This, claims the analysis, would "provide social benefits far in excess of those currently delivered."<sup>14</sup> But, as the Commission has recognized, the social benefits of educational services provided by ITFS licensees cannot be fully realized in a pure commercial marketplace environment.<sup>15</sup>

Moreover, the NY3G analysis improperly compares speculative future benefits from NY3G's hypothetical provision of new services against the historical use of TVC's F-group channels to provide educational video programming.<sup>16</sup> This approach suffers from two infirmities. The first is that the prediction of economic benefits that would supposedly flow from NY3G's future service offerings is far from a sure thing. It is interesting to note that Dr. Hazlett, the author of NY3G's

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<sup>13</sup> *Id.* at Exhibit 2 pp. 14-16.

<sup>14</sup> *Id.* at Exhibit 2 p. 15.

<sup>15</sup> *See FNPRM* at 14225 ¶159.

<sup>16</sup> NY3G Comments at Exhibit 2, p. 13.

economic study, wrote in 1997 about the competitive promise of this same spectrum as follows:

Hovering at about 200,000 subscribers until 1992, MMDS suppliers now count about 700,000 households as customers, and project that by the year 2000 some four million subscribers will be served. The optimism of the capital markets is driven by that growth trend and by the prospect that digital compression technology will render wireless cable's largest drawback -- its 33-channel capacity -- a far less binding constraint.<sup>17</sup>

This competitive promise, of course, was not fulfilled, and the broad failure of wireless cable to succeed in the marketplace cannot be attributed to grandfathered ITFS licensees.

The second infirmity of NY3G's approach is that it fails to account for new services that will be provided by TVC and other EBS licensees and commercial lessees. A principal objective of the Commission's new BRS/EBS band plan is to provide flexibility for developing and offering innovative services, through a combination of high power and lower power cellularized transmission systems. Not only will EBS operators be able to use that new flexibility to develop innovative approaches to meeting their educational mission, but their incentives to maximize the return on use of their spectrum through agreements in the secondary market will allow for innovative commercial services as well.

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<sup>17</sup> Thomas W. Hazlett & Matthew L. Spitzer, Public Policy Toward Cable Television: The Economics of Rate Controls 197 (1997) (footnotes omitted).

For example, educators like TVC are working hard to increase both the efficiency and effectiveness of their instructional methods, and an important part of that initiative is moving towards an approach that is more media-based and less facility-based. Networked and interactive EBS services can facilitate this kind of initiative by, for example, permitting integrated on-demand instructional video transmission across a school system. Such innovations should not be ignored in the calculus about future social benefit from use of the BRS/EBS band. Nor should EBS licensees be precluded, by being deprived of their long-standing spectrum rights, from using their E- and F-group channels to pursue such approaches.

In order to make its “public interest” analysis produce a result that most serves its private commercial interests, NY3G also describes TVC’s current service offerings in an erroneous and misleading way.<sup>18</sup> Contrary to its imprecations, TVC uses its F-group channels to provide important services. Relegating TVC’s F-group channels to secondary status, as NY3G requests, would mean the immediate loss of educational programming to over 100 different schools and more than 18,000 students. And disrupting the excess capacity lease on the F-group channels would further impede the efficient use of the spectrum, by depriving Nextel of its lease rights and removing necessary funding for educational programming. Such existing business relationships, which were fully encouraged by the Commission, should not be disrupted for the private gain of NY3G. As Sprint stated in its own Comments,

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<sup>18</sup> See NY3G Comments at 10 (describing TVC channels as being used “merely to simulcast programming. . . without any technical need to do so.”).

the post-hoc termination of leases would be contrary to Commission policy, would inequitably upset the expectations of both operators and licensees, and would chill future participation in secondary markets, which the Commission has recognized as beneficial to spectrum efficiency.<sup>19</sup>

NY3G's economic analysis also suffers from a false factual premise. Dr. Hazlett proceeds from the assumption that "the impasse in negotiations in New York City's BRS/EBS market" is due to the use by TVC of its F-group licenses "not to provide service to the public, but as bargaining chips in negotiations."<sup>20</sup> NY3G also refers to "the hold-up problem" and "two decades of failed negotiations," as if TVC has somehow failed to engage in reasonable negotiations over the efficient use of the F-group channels.<sup>21</sup> But TVC not only uses its channels to provide important services to its educational communities; it has negotiated and continues to negotiate in good faith with commercial operators. As long ago as 1986, TVC and NY3G (then Grand Alliance) entered a comprehensive Channel Coordination and Channel Lease Agreement, which remained in effect for eight years.<sup>22</sup> NY3G defaulted on its obligations under the agreement, and TVC terminated it in accordance with its terms.<sup>23</sup> TVC then promptly negotiated a lease agreement with a different wireless

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<sup>19</sup> Sprint Comments at 5 & n.7.

<sup>20</sup> NY3G Comments at Exhibit 2, p. 10.

<sup>21</sup> NY3G Comments at 10, 20.

<sup>22</sup> See NY3G Comments at Exhibit 1, Attachment B.

<sup>23</sup> TVC has set out the relevant facts in its Opposition to Petition to Modify Licenses, filed January 25, 2005.

cable operator to achieve the public benefits it could not accomplish because of NY3G's predecessor's breach.<sup>24</sup> That agreement is still in place -- the current lessee is Nextel -- and provides the basis for continued efficient use of the spectrum and the rollout of new commercial broadband services.<sup>25</sup>

**III. The Proposed Relegation of Grandfathered Licensees to Secondary Status Is Inconsistent With Prior Commission Decisions.**

NY3G argues that its proposed confiscation of TVC's F-group channels is supported by prior Commission decisions.<sup>26</sup> But the Commission has consistently repudiated proposals to erode the license rights of incumbent EBS licensees. As emphasized by a number of the commenting parties, the grandfathered E- and F-group channel licensees should participate in the new regulatory regime on an equal footing with other EBS stations and without loss of existing spectrum rights.<sup>27</sup> The Commission has reiterated that premise in this proceeding:

We emphasize, however, that we do not intend to evict any incumbent licensees from the affected band . . . nor do

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<sup>24</sup> See NY3G Comments at Exhibit 2, Attachment E.

<sup>25</sup> TVC has also engaged in more recent discussions with NY3G through October 2004, and is certainly open to continuing negotiations.

<sup>26</sup> NY3G Comments at 11-16.

<sup>27</sup> See Joint Comments of The Catholic Television Network and the Nat'l ITFS Ass'n at 2-7; Further Comments of the School Board of Miami Dade County Florida at 2-3; Comments of Red New York E Partnership at 2-6.

we intend to undermine the educational mission of ITFS licensees.<sup>28</sup>

Contrary to NY3G's attempt at revisionist history,<sup>29</sup> the protection provided to grandfathered ITFS licensees included the grant of Protected Service Areas by the Commission in its Two-Way Order in 1998.<sup>30</sup> NY3G's argument is essentially that when the Commission said "all" it did not mean all. But as other commenters in this proceeding recognize,<sup>31</sup> all ITFS licensees, including grandfathered licensees, did receive PSAs. The Commission stated in its 1998 Two-Way Order,<sup>32</sup> and repeated in its 1999 Order on Reconsideration<sup>33</sup> and its 2000 Order on Further Reconsideration<sup>34</sup> that "all" or "every ITFS licensee" is granted interference protection based on the same 35 mile PSA available to MMDS licensees pursuant to

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<sup>28</sup> Amendment of Parts 1, 21, 73, 74, and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, RM-10586, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*), 18 FCC Rcd 6722, 6725 ¶ 2 (2003).

<sup>29</sup> See NY3G Comments at 17-19.

<sup>30</sup> See Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97-217, *Report and Order*, 13 FCC Rcd 19112, 19173 ¶ 114 (1998) ("*Two-Way Order*"), *recon.*, 14 FCC Rcd 12764 (1999) ("*Two-Way Order Reconsideration*")

<sup>31</sup> See, e.g., Joint Comments of the Catholic Television Network and the Nat'l ITFS Ass'n at 3-4.

<sup>32</sup> *Two-Way R&O* at 19173.

<sup>33</sup> *Two-Way Order Reconsideration* at 12773, ¶ 20.

<sup>34</sup> See Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in

(continued...)

Section 21.902(d). The Commission, in its Two-Way Order Reconsideration, did consider a request by Bellsouth that would have created an exception to the general rule of PSA protection for every ITFS licensee, but rejected it.<sup>35</sup>

NY3G further argues that the Commission's use of the word "all" was intended only to eliminate the distinction between ITFS licensees that leased excess capacity and those that did not.<sup>36</sup> But NY3G provides no support for its bald assertion that the Commission intended to refer only to licensees "other than grandfathered licensees."<sup>37</sup> TVC and other grandfathered licensees had excess capacity leases in place at the time, and the Commission has repeatedly recognized that its excess capacity leasing policy applies to grandfathered ITFS stations. Thus, grandfathered ITFS stations were assigned automatic PSA protection pursuant to the Two-Way Order.

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(...continued)

*Fixed Two-Way Transmissions*, 15 FCC Rcd 14566, 14571, ¶ 20 (2000) ("*Two-Way Order Further Reconsideration*").

<sup>35</sup> *Two-Way Order Reconsideration* at 12775, ¶ 22. In 2003, Commission Staff dismissed a much earlier request by TVC for a PSA for its F-group lessee, in part on the ground that it was moot in light of the Commission's 1998 Two-Way Order. *Trans Video Communications, Inc.: Modification of License of Instructional Television Fixed Service Station KNZ70 in Queens, New York, Memorandum Opinion and Order*, 18 FCC Rcd 18211, 18214 ¶ 9 (2003).

<sup>36</sup> NY3G Comments at 18.

<sup>37</sup> *See Id.*

#### **IV. The “Split-The-Football” Approach is Entirely Feasible.**

Finally, NY3G opposes the adoption of the equitable “split-the-football” approach to resolving situations of substantial overlap between grandfathered E- and F-group licensees and conditional overlay MMDS licensees.<sup>38</sup> Its principal argument, however, is that an equal split of the overlapping geographic areas in which TVC and NY3G are each entitled to protection would acknowledge that TVC has a PSA, which NY3G continues to deny.<sup>39</sup> For the reasons stated above, that argument is wrong.

NY3G’s second argument is in effect that the approach is impractical, asserting that “[n]either licensee could efficiently serve half the New York City market.”<sup>40</sup> To the contrary, however, the approach would be entirely feasible. As Red New York E Partnership describes, a useful service area can encompass less than the entire New York City market, and the parties can be relied upon to cooperate in permitting the provision of practical services.<sup>41</sup> The WCA confirms that the split-the-football approach would treat overlapping BRS and EBS licensees “fairly and pragmatically” and would provide each with an area of exclusive protection within which it can build out its facilities and serve its subscribers.<sup>42</sup>

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<sup>38</sup> NY3G Comments at 17-20.

<sup>39</sup> *Id.* at 17-19.

<sup>40</sup> *Id.* at 19.

<sup>41</sup> Comments of Red New York E Partnership at 4-5 and Attachment A.

<sup>42</sup> Comments of Wireless Commun. Ass’n Internat’l, Inc., at 27-28.

And the many current marketplace examples of commercial wireless service providers that put together blocks of spectrum and roaming agreements in order to provide integrated service across wide geographic areas demonstrates convincingly that it would be technically and economically possible for NY3G to offer a market-wide subscriber service even if its primary exclusive rights are limited to the western half of the New York market. Indeed, given that all devices in the new BRS service will be required to incorporate some degree of frequency agility in order to be usable across multiple markets, it is reasonable to expect that equipment offered by NY3G would be capable of operating throughout the New York market, even if differing frequency bands were in use in eastern and western portions of the market.

## CONCLUSION

The Commission should not deprive grandfathered E- and F-group licensees such as TVC, and the educational communities they serve, of their long-standing spectrum rights. In the transition to the new BRS/EBS band plan, EBS licensees such as TVC should be permitted to use the new flexibility provided by the plan to develop and offer new educational services, and to continue to lease their excess capacity to commercial operators who will provide new commercial broadband services. To resolve situations, such as TVC's, in which there is substantial overlap between the PSA for grandfathered F-group channels and the PSA for the overlay MMDS licensee, the Commission should adopt the equitable "split-the-football" approach and should rely on reasonable marketplace negotiations to resolve any

further conflicts, or should grant primary rights within the GSA to the incumbent EBS licensee. It should not grant NY3G a private commercial windfall by relegating TVC to secondary rights on the channels it has been using so productively for nearly four decades.

Respectfully submitted,

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February 8, 2005

### **CERTIFICATE OF SERVICE**

I, Michael Lazarus, hereby certify that on February 8, 2005, I caused to be filed electronically a true and correct copy of the foregoing "Reply Comments of Trans Video Communications, Inc., on Further Notice of Proposed Rulemaking." I have further caused, on this 8<sup>th</sup> day of February, courtesy copies of these Comments to be served upon the following parties via hand delivery:

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